

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL EVITT,

Plaintiff,

v.

EXPERIAN INFORMATION
SOLUTIONS INC. et al.,

Defendants.

CASE NO. 3:23-cv-05294-LK

ORDER DENYING MOTION FOR
RELIEF FROM ORDER
COMPELLING ARBITRATION

This matter comes before the Court on Plaintiff Michael Evitt's motion for relief from the Court's April 8, 2024 Order Granting Motion to Compel Arbitration. Dkt. No. 76; *see* Dkt. No. 64. For the reasons set forth below, the Court denies Evitt's motion.

I. BACKGROUND

The facts of this case are set forth in the Court's April 8, 2024 Order. Dkt. No. 64 at 1–5. The Court declines to recount them here except as relevant to Evitt's motion.

On April 8, 2024, the Court granted Experian's motion to compel arbitration, and directed Evitt and Experian to file a joint notice on or before May 8, 2024 "setting forth the status of the

1 arbitration proceedings[.]” *Id.* at 14–15. On May 8, 2024, Evitt filed his own status report asserting
2 that “Experian never filed for arbitration, nor paid arbitration fees” and requesting that this matter
3 be withdrawn from arbitration. Dkt. No. 66 at 2–3. Experian filed a separate status report on the
4 same day, indicating that it had “drafted and sent a joint status report to [Evitt] for his consideration
5 that simply stated that [Evitt] had not yet filed a demand in arbitration,” but Evitt elected to file
6 his own report instead. Dkt. No. 67 at 1. Experian also opposed Evitt’s request that the matter be
7 withdrawn from arbitration, contending that “[i]t is axiomatic that Experian would not initiate
8 arbitration against itself.” *Id.* at 2.

9 The Court issued a minute order stating that it would not consider Evitt’s request because
10 it was not filed as a properly noted motion. Dkt. No. 68 (citing Fed. R. Civ. P. 7(b)(1); LCR 7(b)(1),
11 16(a)). On May 15, 2024, Evitt filed the instant motion. Dkt. No. 76. Experian filed its response
12 in opposition on May 30, 2024. Dkt. No. 79.

13 II. DISCUSSION

14 Evitt seeks relief from the Court’s April 8, 2024 Order pursuant to Federal Rule of Civil
15 Procedure 60(b)(6), which provides that “[o]n motion and just terms, the court may relieve a party
16 or its legal representative from a final judgment, order or proceeding for . . . any . . . reason that
17 justifies relief.” *See* Dkt. No. 76 at 2. Evitt specifically contends that Experian is intentionally
18 delaying arbitration because it “has not filed for arbitration, nor paid arbitration fees.” *Id.* at 3.
19 Evitt equates this delay to waiver, and contends that Experian’s “inaction” justifies his request for
20 relief from this Court’s April 8, 2024 Order. *Id.* at 2–3.

21 The Ninth Circuit has cautioned that Rule 60(b)(6) “should be used sparingly as an
22 equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary
23 circumstances prevented a party from taking timely action to prevent or correct an erroneous
24 judgment.” *Afoa v. China Airlines, Ltd.*, 817 F. App’x 369, 370 (9th Cir. 2020) (quotation marks

1 and citations omitted); *see also Henson v. Fidelity Nat'l Fin., Inc.*, 943 F.3d 434, 443–44 (9th Cir.
2 2019). “Judgments are not often set aside under Rule 60(b)(6),” and a party moving for relief under
3 this rule “must demonstrate both injury and circumstances beyond his control that prevented him
4 from proceeding with the action in a proper fashion.” *Latshaw v. Trainer Wortham & Co., Inc.*,
5 452 F.3d 1097, 1103 (9th Cir. 2006) (cleaned up).

6 Evitt has not demonstrated any grounds for relief here. He contends that, because he “never
7 sought arbitration” and instead “vigorously opposed” it, it is Experian’s responsibility to initiate
8 arbitration. Dkt. No. 82 at 3; *see* Dkt. No. 43-2 at 10 (2022 Terms of Use Agreement); Dkt. No.
9 43-3 at 9 (2023 Terms of Use Agreement). In other words, Evitt reasons that because Experian
10 moved to compel arbitration over Evitt’s opposition, Experian is the party that is “seeking
11 arbitration” and therefore must initiate arbitration proceedings.

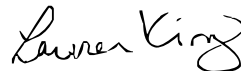
12 Evitt is wrong. Under the Federal Arbitration Act (“FAA”), a motion to compel arbitration
13 is a mechanism to correct the non-movant’s “failure . . . to arbitrate under a written agreement for
14 arbitration[.]” 9 U.S.C. § 4. Thus, the Court’s order compelling arbitration course-corrects *Evitt’s*
15 failure to pursue his dispute in the right forum. That Experian filed the motion does not make it
16 the “party who intends to seek arbitration”; again, under the FAA, the point of Experian’s motion
17 was to compel Evitt’s compliance with the parties’ written agreement. Thus, if Evitt wants relief
18 against Experian, he must abide by the Terms of Use by arbitrating his dispute rather than seeking
19 relief in federal court. And although the Terms permit either Evitt or Experian to commence
20 arbitration, Dkt. No. 43-3 at 9, it would be nonsensical to require Experian to do so. The Court
21 rejects Evitt’s theory to the contrary, which is a classic “heads I win, tails you lose” trap. Evitt may
22 not seek to benefit by filing his dispute in the wrong forum—thereby breaching the Terms—and
23 then forcing Experian to either remedy his breach or else risk waiver.

1 For these reasons, it remains true that Evitt has not “establish[ed] that Experian
2 intentionally acted inconsistently with its right to compel arbitration.” Dkt. No. 64 at 14. Nor has
3 he demonstrated extraordinary circumstances entitling him to Rule 60(b)(6) relief. As for Evitt’s
4 other grievances, the Court reiterates that the parties delegated the issue of contract-based waiver
5 to an arbitrator.

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court DENIES Evitt’s motion for relief from the Court’s
8 April 8, 2024 order granting Experian’s motion to compel arbitration. Dkt. No. 76.

9 Dated this 28th day of June, 2024.

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11 Lauren King
12 United States District Judge
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